



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0473; FRL-9952-30-Region 4]

Air Plan Approval; Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a portion of a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on May 8, 2013. The revision modifies the definition of “volatile organic compounds” (VOC). Specifically, the revision adds one compound to the list of those excluded from the VOC definition on the basis that this compound makes a negligible contribution to tropospheric ozone formation. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-0473 at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached by phone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO_x) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments limit the amount of VOC and NO_x that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form

ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed or do not form ozone to the same extent.

Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of “VOC,” and hence what compounds shall be treated as VOC for regulatory purposes. It has been EPA’s policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone and should be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). EPA determines whether a given carbon compound has “negligible” reactivity by comparing the compound’s reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called “negligibly reactive.” EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

EPA issued a final rule approving the addition of trans-1,3,3,3-tetrafluoropropene (also known as HFO-1234ze) to the list of those compounds excluded from the regulatory definition of VOC. *See* 77 FR 37610 (June 22, 2012). Alabama is updating its SIP to be consistent with that change to federal regulations.

II. Analysis of State’s Submittal

On May 8, 2013, ADEM submitted a SIP revision¹ to EPA for review and approval. The revision modifies the definition of VOC found at Alabama Administrative Code section 335-3-1-.02(gggg). Specifically, the revision adds trans-1,3,3,3-tetrafluoropropene (also known as HFO-

¹ EPA will consider the other changes included in Alabama’s May 8, 2013, SIP submittal, which relate to permitting, greenhouse gases, and transportation conformity, in a future rulemaking.

1234ze) to the list of compounds excluded from the VOC definition on the basis that this compound makes a negligible contribution to tropospheric ozone formation.

This change is consistent with section 110 of the CAA and meets the regulatory requirements pertaining to SIPs. Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. The revision to Rule 335-3-1-.02(gggg) is approvable under section 110(l) because it reflects changes to federal regulations based on findings that the aforementioned compound is negligibly reactive.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Alabama Regulation section 335-3-1-.02 “Definitions,” effective November 24, 2015, which is the most up to date version of the definition of VOC.² Therefore, this material has been approved by EPA for inclusion in the SIP, has been incorporated by reference by EPA into that plan, is fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.³ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information

² Although the effective date of the rule change made in Alabama’s May 8, 2013, SIP revision is May 28, 2013, the most recent version of Alabama’s Rule 335-3-1-.02(gggg) which is approved into the federally-approved SIP is November 24, 2015. *See* 81 FR 49899 (July 29, 2016). The November 24, 2015, version of Alabama’s Rule 335-3-1-.02(gggg) captures the changes the State made to this rule, effective May 28, 2013.

³ 62 FR 27968 (May 22, 1997).

Contact” section of this preamble for more information).

IV. Final Action

Pursuant to section 110 of the CAA, EPA is approving the revision to the Alabama SIP changing the VOC definition. EPA has evaluated Alabama’s May 8, 2013, submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless the Agency receives adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 2, 2016.

V. Anne Heard,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B – Alabama

2. Section 52.50(c) is amended by revising the entry for “Section 335-3-1-.02” to read as follows:

§ 52.50 Identification of plan.

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(c) * * *

EPA Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 335-3-1 - General Provisions				
* *	* *	*	*	*
Section 335-3-1-.02	Definitions	11/24/2015	[Insert date of publication in <u>Federal Register</u>], [Insert Federal Register citation]	
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[FR Doc. 2016-22221 Filed: 9/15/2016 8:45 am; Publication Date: 9/16/2016]